with all respect to the Federal Court, can see no ambiguity for any relevant purposes in that section.

The Federal Court also dwelt on possible hardship to the tenant, and the power of the landlord to harass him if the appellants' argument were right. No doubt there are some cases in section 15, as their Lordships have already pointed out, where the facts giving rise to a successful claim for possession by the landlord, may be outside the knowledge of the tenant or where the granting of possession will depend upon the discretion of the court; but this in their Lordships' opinion can afford no ground for not giving to section 27 its clear meaning.

Accordingly in their Lordships' opinion the tenant on expiry of the notice to quit failed to qualify as a statutory tenant within the meaning of section 27; and became a trespasser, with the consequence accepted or conceded in many cases in the Malay States and in Singapore that she became liable to pay *mesne* profits.

Their Lordships therefore allow the appeal of the landlords and restore the judgment of Choor Singh J. The matter must be remitted to the High Court to determine the question (reserved by that court) of the tenant's claim to deduct income tax in assessing *mesne* profits.

The tenant's cross-appeal will be dismissed.

The tenant must pay the costs of this appeal and cross-appeal before their Lordships' Board and of the proceedings in the Federal Court.

Appeal allowed;

Cross-appeal dismissed.

Solicitors: *Speechly, Mumford & Soames; Linklaters & Paines.*

GUAN BEE & CO. v. PALEMBANG SHIPPING CO. LTD.

[O.C.J. (Buttrose J.) December 10, 1964]
[Singapore — Suit No. 771 of 1962]

Shipping — Bill of lading — Seaworthiness — Damage to cargo — Badly damaged starboard scupper pipe metal wastage or latent defect — Exercise of due diligence — Hague Rules, art. III rr. 1 & 2, art. IV — Carriage of Goods by Sea Ordinance (Cap. 173).

Carriage of Goods by Sea — Exercise of due diligence to make ship seaworthy before and at the beginning of the voyage — Hague Rules art. III r. 1 — What is exercise of due diligence — Perfunctory and cursory examination not sufficient — Examination must be such as a reasonably careful skilled man would make.

On December 21, 1961, 7,292 packages of copra cakes, the property of the plaintiffs, were shipped in apparent good order and condition on board the defendants' vessel the *Selat Madura* at Sourabaya under a bill of lading of that date for carriage to New York with transhipment at Singapore. It was provided by the bill of lading that it was to have effect subject to the provisions of the Hague Rules which are contained in the Schedule to the Carriage of Goods by Sea Ordinance (Chapter 173) which shall override any of the terms or exceptions in clause (1) of the bill of lading that may be in conflict or inconsistent therewith. It was conceded at the trial by counsel for the defendants that the Hague Rules applied.

Of the 7,292 packages of copra shipped 3,748 packages were stored at the bottom of No. 3 Hold.

On December 23, two days after the vessel sailed from Sourabaya it was noticed that she had a heavy list to starboard. An investigation to ascertain the cause proved abortive and the vessel continued on her voyage. On the following morning, December 24, it was noticed that water mixed with copra cake was pouring out of the starboard forward main deck at No. 3 Hold. An investigation was made and it was found that a considerable quantity of water had entered the No. 3 Hold and as the cargo came up to the hatch covers it was not possible to trace its sources. The crew had to go over the ship's side on a staging to fit a bolt or hook patch over the exit to the scupper pipe An attempt was made to pump the water out of No. 3 Hold without success. The vessel continued her voyage and arrived at Singapore on the morning of December 25. All of the 3,748 packages at No. 3 Hold were found to be damaged.

After the water had been pumped out and some of the No. 3 Hold cargo had been discharged an inspection was made and it was discovered that the two scupper pipes which passed through No. 3 Hold were holed. The starboard scupper pipe had a hole 6" x 1½" while the port scupper pipe had a hole 1" x ¾" and water had entered through these holes. An examination of the scupper pipes revealed that they were badly wasted by rust from lack of maintenance.

Held: (1) the evidence clearly established and it was never seriously disputed that the vessel was unseaworthy before and at the beginning of the voyage. The condition of the starboard scupper pipe in No. 3 Hold was such that no prudent owner would have sent the vessel to sea without requiring the defect to be made good had he known of it;

(2) the defendants had not discharged the burden of proving that they had exercised due diligence to make the vessel seaworthy before and at the beginning of the voyage. The scupper pipe badly damaged as it was through rust and corrosion and in its badly weakened and wasted condition was discoverable on a careful and proper examination by a reasonably careful and skilled man. A perfunctory and cursory examination is not exercise of due diligence;

(3) a latent defect is a defect which could not be discovered on such an examination as a reasonably careful skilled man would make.

[Editorial Note: We are grateful to Mr. M. Karthigesu for bringing this case to our notice.]

Cases referred to:—

(1) *Brown* v. *Nitrate S.S. Co.* (1937), 58 Ll.L.R. 188 at p. 191.

(2) *Riverstone Meat Co. Pty. Ltd* v. *Lancashire Shipping Co. Ltd.* [1961] A.C. 807; [1961] 2 W.L.R. 269; [1961] 1 Lloyd's Rep. 57.

CIVIL SUIT.

M. Karthigesu for the plaintiffs.

C.H. Smith for the defendants.

Cur. Adv. Vult.

Buttrose J.: This is an action for damages for breach of contract and, or in the alternative,

for breach of duty in connection with the carriage of goods by sea. The facts are as follows:—

On the 21st December 1961, 7,292 packages of copra cakes, the property of the plaintiffs, were shipped in apparent good order and condition on board the *Selat Madura* at Sourabaya under a bill of lading of that date for carriage to New York with transhipment at Singapore. It was provided by the bill of lading that it was to have effect subject to the provisions of the rules (commonly known as the Hague Rules) which are contained in the Schedule to the Carriage of Goods by Sea Ordinance (Chapter 173) which shall override any of the terms or exceptions in clause 1 of the bill of lading that may be in conflict or inconsistent therewith. It was conceded at the trial by counsel for the defendants that the Hague Rules applied.

Of the 7,292 packages of copra cakes shipped 3,748 packages were stored at the bottom of No. 3 lower Hold.

On the 23rd December, two days after the vessel sailed from Sourabaya it was noticed that she had a heavy list to starboard. An investigation to ascertain the cause proved fruitless and the vessel continued on her voyage. On the following morning, the 24th December it was noticed that water mixed with copra cake was pouring out of the starboard forward main deck scupper at No. 3 Hold. An inspection was made and it was found that a considerable quantity of water had entered the hold but as the cargo came up to the hatch covers it was not possible to trace its source. The crew had to go over the side on a staging to fit a bolt or hook patch over the exit to the scupper pipe. An attempt was made to pump the water out of No. 3 Hold without success. The vessel continued on her voyage and arrived at Singapore on the morning of the 25th December. All of the 3,748 packages in No. 3 Hold were found to be damaged.

After the water had been pumped out and some of the lower Hold cargo had been discharged an inspection was made and it was discovered that the two scupper pipes which pass through No. 3 Hold were holed. The starboard scupper pipe had a hole 6" x 1½" while the port scupper pipe had a hole 1" x ¾" and through these holes water had entered the hold. An examination of the scupper pipes revealed that they were badly wasted by rust from lack of maintenance.

Upon these facts the plaintiffs brought the present action against the defendants claiming that they were liable for the damage to plaintiffs' goods.

The plaintiffs contended that the ship at and before the commencement of the voyage from Sourabaya on the 21st December 1961 was unseaworthy. They relied specifically on Article III rules I and II of the Hague Rules which are as follows:—

Article III rule I "The carrier shall be bound, before and at the beginning of the voyage, to exercise due diligence to:

(a) make the ship seaworthy . .

(b) make the holds . . . . and all other parts . . . . in which goods are carried fit and safe for their reception, carriage and preservation."

rule II "Subject to the provisions of Article IV the carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried."

The plaintiffs' case was that the condition of the starboard scupper pipe which passed through No. 3 Hold in which part of their goods was being carried was so wasted and weakened by rust and in such a damaged condition before and at the beginning of this voyage as to render the vessel unseaworthy.

The evidence clearly established and it was never seriously disputed that the vessel was unseaworthy before and at the beginning of the voyage. That the condition of the starboard scupper pipe in No. 3 Hold was such that no prudent owner would have sent the vessel to sea without requiring the defect to be made good had he known of it is clear beyond doubt.

The substantial issue in the case which was raised by the defence was as to whether by the exercise of due diligence this defect should have been discovered. Was the defect in the starboard scupper pipe a latent and undiscoverable one? In my judgment that question must be answered in the negative. A latent defect is a defect which could not be discovered on such an examination as a reasonably careful skilled man would make. It is not latent if it can be discovered by reasonable means. This I conceive to be the principle underlying Porter J.'s judgment in *Brown* v. *Nitrate S.S. Co.*[1] where he stated "I cannot myself believe that it is obligatory upon a ship's officer on the commencement of a voyage to go and tap every rivet to find if it has a defect or not".

But that is not this case. This is not a case of inspecting and tapping every rivet in the vessel but of examining and checking two scupper pipes passing through a hold in which valuable cargo is stowed.

The other case to which I was referred to, *Riverstone Meat Co., Pty., Ltd.* v. *Lancashire Shipping Co., Ltd.*,[2] established and emphasized the personal obligation imposed on the carrier by the Hague Rules notwithstanding the fact that he engages competent experts such as independent contractors to perform and supervise the task of making the ship seaworthy. The case is not of much assistance in determining the question with which I am faced here but it is of considerable interest in that it deals fully with the obligations and responsibilities of a carrier under the rules and makes an extensive review of all the authorities on the subject to which, for the purposes of the present case, I deem it un-

necessary to refer. The question I have to clarify is whether this case was truly one of latent defect on which the shipowners could escape the consequence which flow from it.

I am therefore to consider what was the examination or inspection to which these scupper pipes were subjected before and at the commencement of the voyage from Sourabaya. The evidence on the subject was that of the ship's engineer who said that after the vessel arrived at Sourabaya the cargo was unloaded and the holds cleared. Before the loading of the new cargo there was an inspection of the holds, including No. 3 Hold by the chief officer and the ship's engineer. According to the engineer it was dark in the hold and a torchlight had to be used. The inspection was made by standing on the floor of the hold and shining the torch upwards on to the scupper pipes which could not be reached because they were high up in the Hold. No attempt was made to reach, handle or examine them at close quarters. As on that examination, which I can only describe as perfunctory and cursory, the scupper pipes did not appear to be leaking or rusting, the ship's engineer came to the conclusion that they were alright. He said he did not check the scupper pipes because they were too high and out of reach nor were they tested in any way.

This was not, in my view, the exercise of that due diligence which the law imposes on a carrier and was quite inadequate to what the circumstances of the case required and the situation demanded.

These scupper pipes had no protective covering of any description and passed in their naked and uncovered state through No. 3 Hold in which valuable cargo was stored. Because of their very nature and use scupper pipes are susceptible to rust and corrosion and in the view I take a thorough examination of them was essential. They should have been inspected and checked at close range and tested. It is true that the evidence establishing that it was quite possible for a scupper pipe to be badly rusted internally but disclose no visible signs of this externally but that, so it seems to me, only serves to indicate the necessity for a high degree of care and attention in testing and checking them. Similarly if bad weather was to be expected as was the case here the standard of seaworthiness required is correspondingly high.

After the vessel docked in Singapore there was evidence that patches of rust were visible on the outside of the scupper pipes which should and would have been apparent to the ship's engineer if he had inspected them at close quarters as, in my opinion, he should have done.

I have not overlooked in this connection the report of Mr. Stewart of Ritchie & Bisset dated the 30th August, 1961. There is no specific mention of scupper pipes in his report but the evidence was that they came under Load Line Item all of which according to the report were checked and placed in a satisfactory condition at that time. Mr. Stewart was not called to give evidence as he had left Singapore some time ago. However, Mr. Crawford a present member of the firm of Ritchie & Bisset did give evidence but all he was able to say regarding this particular aspect of the case was that from his reading of Mr. Stewart's report he would say that the scupper pipes had been looked at. But that, in my opinion, does not take the case any further and in the absence of Mr. Stewart I am not prepared to speculate on what sort of look he gave the scupper pipes. We know the ship's engineer looked at them and two days after leaving port they were holed, the starboard scupper pipe substantially.

What was of interest in Mr. Crawford's evidence was that it transpired that it was usual to have a hammer test for scupper pipes which he said was the normal type of test. This was not carried out by the ship's engineer nor is there any evidence that Mr. Stewart did so.

Whether or not the scupper pipes were actually holed before and at the commencement of the voyage and if so to what extent I do not feel called upon to make any finding and I refrain from doing so. Suffice it to say that in my opinion, this scupper pipe badly damaged as it was through rust and corrosion and in its badly weakened and wasted condition was discoverable on a careful and proper examination by a reasonably careful man skilled in the matter.

For these reasons therefore, in my judgment, this was not the case of a latent defect and the defendants are liable to the plaintiffs for the damage caused to their goods.

As it was agreed by the parties at the commencement of the trial that I should only concern myself with the issue of liability I direct, by consent, that the quantum of damages to which the plaintiffs are entitled as the result of this judgment be referred to the registrar for enquiry and assessment.

The defendants must pay the plaintiffs costs of action including the reference before the registrar.

Judgment for the plaintiffs.

Solicitors: *Allen & Gledhill; Laycock & Ong.*